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6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF NEVADA  
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9 DONALD G. RAINEY,

10 Plaintiff,

11 vs.

12 DAN WATTS, et al.,

13 Defendants.  
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Case No. 3:12-cv-00386-RCJ-WGC

**ORDER**

15 Plaintiff, who is a prisoner in the custody of the Nevada Department of Corrections, has  
16 submitted an application to proceed in forma pauperis, a civil rights complaint pursuant to 42  
17 U.S.C. § 1983 (#1), and an amended complaint (#3). The court denies the application to proceed in  
18 forma pauperis because plaintiff has paid the filing fee in full. The court has screened the complaint  
19 and the amended complaint. Plaintiff will need to file a second amended complaint.

20 When a “prisoner seeks redress from a governmental entity or officer or employee of a  
21 governmental entity,” the court must “identify cognizable claims or dismiss the complaint, or any  
22 portion of the complaint, if the complaint (1) is frivolous, malicious, or fails to state a claim upon  
23 which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from  
24 such relief.” 28 U.S.C. § 1915A(b). Rule 12(b)(6) of the Federal Rules of Civil Procedure provides  
25 for dismissal of a complaint for failure to state a claim upon which relief can be granted.  
26 Allegations of a pro se complainant are held to less stringent standards than formal pleadings  
27 drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972) (per curiam).  
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1 Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a "short and plain  
 2 statement of the claim showing that the pleader is entitled to relief." . . . [T]he pleading  
 3 standard Rule 8 announces does not require "detailed factual allegations," but it demands  
 4 more than an unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that  
 5 offers "labels and conclusions" or "a formulaic recitation of the elements of a cause of action  
 6 will not do." Nor does a complaint suffice if it tenders "naked assertion[s]" devoid of  
 7 "further factual enhancement." . . .

8 [A] complaint must contain sufficient factual matter, accepted as true, to "state a claim to  
 9 relief that is plausible on its face." A claim has facial plausibility when the plaintiff pleads  
 10 factual content that allows the court to draw the reasonable inference that the defendant is  
 11 liable for the misconduct alleged. The plausibility standard is not akin to a "probability  
 12 requirement," but it asks for more than a sheer possibility that a defendant has acted  
 13 unlawfully. Where a complaint pleads facts that are "merely consistent with" a defendant's  
 14 liability, it "stops short of the line between possibility and plausibility of 'entitlement to  
 15 relief.'"

16 Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 1949 (2009) (citations omitted).

17 Plaintiff alleges that on June 6, 2008, he was beaten by three people. He was arrested after  
 18 the beating, booked into the county jail, and treated at the hospital for his injuries. According to  
 19 documents attached to the complaint, on August 28, 2008, plaintiff was treated at the hospital again.  
 20 He complained of continuing headaches and ringing in his ears. The latest date on any of the  
 21 documents is in November 2008.

22 The first problem is that the amended complaint (#3) contains no allegations of its own. For  
 23 the purposes of this order, the court has been referring to the original complaint (#1). However, an  
 24 amended complaint must be complete by itself. If plaintiff does not re-allege all causes of action in  
 25 an amended complaint, then they are waived. King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987).

26 The second problem is that the original complaint (#1) itself is too vague. "[D]eliberate  
 27 indifference to a prisoner's serious illness or injury states a cause of action under section 1983."  
 28 Estelle v. Gamble, 429 U.S. 97, 105 (1976). "A 'serious' medical need exists if the failure to treat a  
 29 prisoner's condition could result in further significant injury or the 'unnecessary and wanton  
 30 infliction of pain.'" McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992) (quoting Gamble,  
 31 429 U.S. 104), overruled on other grounds, WMX Techs., Inc. v. Miller, 104 F.3d 1133, 1136 (9th  
 32 Cir. 1997) (en banc). "The existence of an injury that a reasonable doctor or patient would find  
 33 important and worthy of comment or treatment; the presence of a medical condition that  
 34 significantly affects an individual's daily activities; or the existence of chronic and substantial pain

1 are examples of indications that a prisoner has a 'serious' need for medical treatment." McGuckin,  
2 974 F.2d at 1059-60.

3 Deliberate indifference is subjective. The prison official cannot be held liable "unless the  
4 official knows of and disregards an excessive risk to inmate health or safety; the official must both  
5 be aware of facts from which the inference could be drawn that a substantial risk of harm exists, and  
6 he must also draw the inference." Farmer v. Brennan, 511 U.S. 825, 838 (1994). "To show  
7 deliberate indifference, the plaintiff must show that the course of treatment the doctors chose was  
8 medically unacceptable under the circumstances and that the defendants chose this course in  
9 conscious disregard of an excessive risk to plaintiff's health." Snow v. McDaniel, 681 F.3d 978,  
10 988 (9th Cir. 2012) (internal quotations omitted). However, a difference of opinion over the  
11 appropriate course of treatment does not amount to deliberate indifference. Toguchi v. Chung, 391  
12 F.3d 1051, 1058 (9th Cir. 2004).

13 Plaintiff alleges in the section titled "Nature of the Case" that he did not receive full medical  
14 treatment, but he does not allege what his injuries were and what treatment was necessary. In the  
15 part of the complaint form used for alleging the counts, plaintiff presents only legal argument, and  
16 he does not allege any facts at all. The court cannot determine from what plaintiff has alleged  
17 whether he has a serious medical need.

18 The court also cannot determine whether the jail officials or the staff at the hospital were  
19 deliberately indifferent. One document dated August 28, 2008, indicates that the ringing in  
20 plaintiff's ears and his headaches likely are permanent due to the injuries that he suffered. Unless  
21 plaintiff alleges that those problems can be cured through medical treatment, at best he has alleged a  
22 difference in opinion between himself and the doctor.

23 Third, plaintiff has not alleged facts showing that governmental entities can be liable.  
24 Plaintiff has named Dan Watts, Sheriff of White Pine County, and John Gandy, a doctor at the  
25 William Bee Ririe Hospital, in their individual and official capacities.<sup>1</sup> Plaintiff also has named  
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27 <sup>1</sup>Plaintiff also has named several "Doe" defendants, but the action cannot proceed against  
28 them unless he provides the court with their identities. In the amended complaint, plaintiff has  
identified two deputy sheriffs by their last names, but he has not indicated in what capacity he is

1 White Pine County and the William Bee Ririe Hospital as defendants in the caption of the complaint  
2 (#1). While individual-capacity actions seek to impose personal liability upon a government official  
3 for actions performed under color of state law, official-capacity actions generally represent another  
4 way of suing "an entity of which an officer is an agent." Kentucky v. Graham, 473 U.S. 159, 165  
5 (1984) (quoting Monell v. Department of Social Services of City of New York, 436 U.S. 658, 690  
6 n.55 (1978)). To succeed with official-capacity claims against defendants and claims against  
7 governmental entities, Plaintiff must prove that any constitutional violations that he suffered  
8 occurred as a result of an official policy or custom. Monell, 436 U.S. at 690. Plaintiff does not  
9 allege that any policy or custom prevented him from obtaining medical treatment. In his second  
10 amended complaint, he will need to allege what that policy or custom is.

11 Fourth, plaintiff needs to allege when he was transferred from the custody of the White Pine  
12 County Sheriff to the custody of the Nevada Department of Corrections, because it appears that this  
13 action is untimely. Section 1983 does not have its own statute of limitations. A court uses the  
14 statute of limitations for personal injury actions of the state in which it is located. Wilson v. Garcia,  
15 471 U.S. 261 (1985). In Nevada, the applicable statute of limitations is Nev. Rev. Stat.  
16 § 11.190(4)(e), which has a period of limitations of two (2) years. Perez v. Seevers, 869 F.2d 425,  
17 426 (9th Cir. 1989) (per curiam). "Federal law determines when a cause of action accrues and the  
18 statute of limitations begins to run for a § 1983 claim. A federal claim accrues when the plaintiff  
19 knows or has reason to know of the injury which is the basis of the action." Bagley v. CMC Real  
20 Estate Corp., 923 F.2d 758, 760 (9th Cir. 1991) (citations and internal quotations omitted).

21 Plaintiff was beaten and arrested on June 6, 2008, and the documents attached to the  
22 complaint (#1) indicate that he was last seen in the hospital in November 2008. To the extent that  
23 plaintiff claims that defendants should have treated him properly immediately after his arrest, that  
24 cause of action accrued on June 6, 2008, and the period of limitations ran out on June 7, 2010,  
25 taking a Sunday into account, more than two years before plaintiff commenced this action. To the  
26 extent that plaintiff claims that defendants should have treated him properly while he was in their  
27 \_\_\_\_\_  
28 suing those defendants.

1 custody, the defendants' responsibility to for his medical care ended when their custody over him  
2 ended. If plaintiff was transferred to the custody of the Nevada Department of Corrections more  
3 than two years before he commenced this action, then the period of limitations has run out, and he  
4 cannot maintain an action against defendants for deliberate indifference to his serious medical  
5 needs. Consequently, plaintiff will need to allege when he was transferred from defendants'  
6 custody.

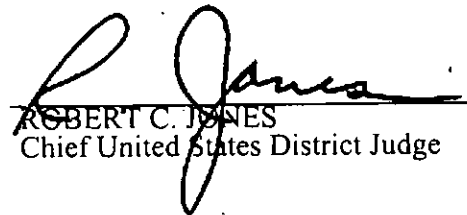
7 IT IS THEREFORE ORDERED that the clerk of the court file the application to proceed in  
8 forma pauperis, which is in the court's docket at #1, pp. 13-15.

9 IT IS FURTHER ORDERED that the application to proceed in forma pauperis is **DENIED**  
10 as moot.

11 IT IS FURTHER ORDERED that the amended complaint (#3) is **DISMISSED** for failure to  
12 state a claim upon which relief can be granted, with leave to amend. The clerk shall send to plaintiff  
13 a civil rights complaint form with instructions. Plaintiff will have thirty (30) days from the date that  
14 this order is entered to submit his second amended complaint, if he believes that he can correct the  
15 noted deficiencies. Failure to comply with this order will result in the dismissal of this action.

16 IT IS FURTHER ORDERED that plaintiff shall clearly title the amended complaint as such  
17 by placing the phrase "SECOND AMENDED" immediately above "Civil Rights Complaint  
18 Pursuant to 42 U.S.C. § 1983" on page 1 in the caption, and plaintiff shall place the case number,  
19 3:12-cv-00386-RCJ-WGC, above the phrase "SECOND AMENDED."

20 Dated: November 14, 2012

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23 ROBERT C. JONES  
24 Chief United States District Judge  
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